

DISTRICT OF COLUMBIA
DOH Office of Adjudication and Hearings
825 North Capitol Street N.E., Suite 5100
Washington D.C. 20002

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH
Petitioner,

v.

PAMELA ANN B. DANNER
Respondent

Case No.: I-00-70193

FINAL ORDER

I. Introduction

On October 19, 2001, the Government served a Notice of Infraction upon Respondent Pamela Ann B. Danner alleging a violation of 21 DCMR 700.3, which requires property owners to containerize solid wastes properly. The Notice of Infraction alleged that violation occurred on October 18, 2001 at 1806 T Street, N.W., and sought a fine of \$1,000.

Respondent filed a timely plea of Deny, and I held an evidentiary hearing on January 9, 2002. Gerard Brown, the inspector who issued the Notice of Infraction, appeared on behalf of the Government and Respondent appeared on her own behalf. Based upon the testimony of the witnesses at the hearing, my evaluation of their credibility, and the documents entered into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Respondent owns a two-story commercial building located at 1806 T Street, N.W. She leases space in the building to two tenants – a software development company and a financial services company. Both office suites contain a small kitchen area with a microwave oven.

On October 18, 2001, Mr. Brown observed uncovered trash cans overflowing with trash alongside the building. Most of that trash was contained in plastic bags. Plastic trash bags and boxes of trash also were on the ground next to the trash cans. Mr. Brown observed food items, including fast food wrappers, in the plastic bags. Those bags were easily accessible to rats, which could rip the bags open to obtain the food wastes contained inside. The proximity of the cans to both a wall and a fence made it easy for rats to climb to the top of the trash cans to gain access to their contents. While Respondent expressed doubt that the trash from her commercial tenants contained food items, I credit Mr. Brown's testimony that he observed such items. Moreover, the presence of kitchen areas in the office suites supports an inference that the tenants generated food wastes from employee lunches or coffee breaks.

Respondent and one of her tenants undertook improvement efforts after issuance of the Notice of Infraction. The tenant re-arranged the schedule of its cleaning service to better coincide with the trash pick-up day, and posted a sign encouraging the cleaners to place all trash inside the cans. Respondent purchased additional trash cans for the property and has increased the frequency of her pest control service from quarterly to monthly.

III. Conclusions of Law

The regulation at issue provides:

All solid wastes shall be stored and containerized for collection in a manner that will not provide food, harborage, or breeding places for insects or rodents, or create a nuisance or fire hazard.

21 DCMR 700.3.

The storage of wastes in open trash cans and on the ground at Respondent's building violated this regulation because rats easily could obtain access to food items in the plastic bags. Respondent argued that she should have received a warning before issuance of the Notice of Infraction, but the regulation itself provides sufficient notice of the prohibited conduct. *DOH v. Semple*, OAH No. I-00-70294 at 5 (Final Order, September 18, 2001); *Bruno v. District of Columbia Board of Appeals and Review*, 665 A.2d 202, 204 (D.C. 1995).

The Rodent Control Act of 2000 classified a violation of § 700.3 as a Class 1 infraction, which is punishable by a fine of \$1,000 for a first offense.¹ 16 DCMR 3201. A \$1,000 fine, therefore, will be imposed.

¹ The Rodent Control Act of 2000 is Title IX of the Fiscal Year 2001 Budget Support Act of 2000, effective October 19, 2000, D.C. Law 13-172. See 47 D.C. Reg. 8692 (November 10, 2000); 47 D.C. Reg. 6308 (August 11, 2000). Section 910(b) of that Act established new fines for violations of various rodent control measures, including § 700.3. 47 D.C. Reg. at 6339 (August 11, 2000).

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondent shall pay a total of **ONE THOUSAND DOLLARS (\$1,000)** in accordance with the attached instructions within twenty (20) calendar days of the date of service of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1 ½% per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **1/31/02**

John P. Dean
Administrative Judge